



DATE ISSUED: March 21, 1989  
CASE NO. 88-INA-393

IN THE MATTER OF THE APPLICATION  
FOR AN ALIEN EMPLOYMENT CERTIFI-  
CATION UNDER THE IMMIGRATION AND  
NATIONALITY ACT

BUDGET IRON WORK  
Employer

on behalf of

ELMER ODIE CASTRO BLANCO  
Alien

Donald Land, Pro Se

BEFORE: Litt, Chief Judge; Brenner, Guill, Schoenfeld, Tureck, and Williams,  
Administrative Law Judges

NAHUM LITT  
Chief Judge:

DECISION AND ORDER

This case arose from an application for labor certification submitted by the Employer on behalf of the Alien pursuant to Section 212(a)(14) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(14) (the Act). The Certifying Officer (CO) of the U.S. Department of Labor denied the application, and the Employer requested administrative-judicial review pursuant to 20 C.F.R. §656.26 (1988).<sup>1</sup>

Under Section 212(a)(14) of the Act, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is ineligible to receive labor certification unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that there are not sufficient workers who are able, willing, qualified and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform such labor, and that the employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

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<sup>1</sup> All regulations cited in this decision are contained in Title 20 of the Code of Federal Regulations.

An employer who desires to employ an alien on a permanent basis must apply for labor certification pursuant to §656.21. These requirements include the responsibility of the employer to recruit U.S. Workers at the prevailing wage and under prevailing working conditions through the public employment service and by other reasonable means in order to make a good faith test of U.S. worker availability.

This review of the denial of labor certification is based on the record upon which the denial was made, together with the request for review, as contained in an Appeal File (A 1-149), and any written arguments of the parties. §656.27(c).

#### Statement of the Case

On December 16, 1986, the Employer, Donald Land doing business as Budget Iron Work, filed an application for alien employment certification to enable the Alien to fill the position of iron worker. The duties required that the employee know how to weld, cut with hacksaw and acetylene torch and arc cutting equipment, know how to put parts together to form doors, awnings frames, door frames, ornamental fences, etc. There was no educational requirement, but the Employer required two years experience in the job offered, and a willingness to work Saturdays and two hours of overtime daily. (A 1-10).

The Certifying Officer issued a Notice of Findings on December 24, 1987 (A 6-8). The CO stated that the Employer did not show a good faith effort to contact applicants who replied to the published advertisement in a timely manner. According to the CO, resumes or names of four applicants were sent to the Employer by the Job Service Office on March 10, and the Employer did not attempt to contact applicants until April 1. The written contact misspelled the Employer's name and provided no telephone number for contact. None of the four applicants appeared at the Employer's scheduled interview. The CO found that U.S. workers were rejected for other than lawful, job-related reasons under §656.21(j)(1), and that the Employer had not conclusively demonstrated that the four applicants could not perform the basic job duties in a satisfactory manner based on their experience under §656.24(b)(2)(ii). The CO required the Employer to show why the U.S. workers were not qualified, willing or available at the time of initial consideration and referral.

In its rebuttal, dated January 12, 1987 (apparently meaning January 12, 1988), the Employer explained that the resumes of the applicants were not received until March 16, 1987, and that it was unable to schedule the appointments for interviews until the first of April. According to the Employer, Western Union misspelled the name of the owner; however, the address provided was correct, and even though no phone number was given, the applicants, if they were interested in the position, could have contacted the Employer's office in person or by correspondence to schedule a more convenient time. The Employer stated that none of the four applicants made an effort to appear at the scheduled interview, and it could not base its hiring decisions on a resume. The Employer believes that it made a good faith effort to follow the instructions provided. (A 5).

On March 18, 1988 the CO issued a Final Determination (A 3-4). In it, he found that by not conducting a good-faith effort to recruit, employer has not shown that the position is "clearly open to any qualified U.S. worker" and that in the absence of lawful, job-related reasons for rejection, four specified applicants are able and available to perform the job duties.

On appeal, filed April 13, 1988, the Employer noted that it received the resumes on March 16, 1987, and sent mailgrams scheduling the interviews on April 1, 1987. The Employer stated that it had not gone through this certification process before, has gone to considerable expense in this effort. The Employer also stated that it had trouble scheduling appointments since its work is done in the field and it has no stable place to conduct interviews. It believes that a face to face interview is necessary, because it does not believe one can accept all the statements in a resume. Finally, it believes that the applicants demonstrated their lack of interest which proves that they are not available and interested, and that it has gone out of its way to fulfill the requirements imposed by the California Employment Development Department and the Department of Labor. The Employer believes that it is unfair to deny certification based on mere assumptions and miscalculations. (A 1-2).

On brief, the Employer explained that it did not attempt to contact the four applicants until it sent them Mailgrams on April 1, 1987, which provided "' . . the date, time, address and person to contact for a better sense of direction to each person." It believed that the misspelling of the name of the Employer on the Mailgram is not an issue or a partial reason for denial, and that the applicants should have appeared as scheduled if they were really interested. It also believed that the applicants were not interested because they did not attempt to contact the Employer to reschedule the interview. The Employer admitted that the failure to include a phone number was an oversight; however, it does not consider that it was at fault since the applicants' did not call when the business name and address was included. It believed that it had followed the rules and regulations correctly. The Employer concluded that the applicants were not interested and that certification should be granted.

### Discussion and Conclusion

Under §656.20(j)(1)(iv), an employer must explain, with specificity, the lawful, job-related reasons for not hiring U.S. workers. In Tempco Engineering, Inc., 88-INA-101 (Jun. 20, 1988), we held that where applicants failed to respond to an employer's offer to interview them because the employer failed to give them an adequate opportunity to respond to its offer, there was not a good faith effort to recruit U.S. workers.

Here, the Employer sent a Mailgram to each applicant on a Wednesday that could not have been received by them before Thursday, scheduling an interview for the next Monday morning. That communication did not contain a telephone number where the employer could be reached, did not give a company name, did not clearly identify the job in question, and twice

misspelled the name of the persons to conduct the interview.<sup>2</sup> One Mailgram was addressed to David Lester, but the name of that applicant is David Webster.

The Employer did not provide these applicants an ample opportunity to respond to its offer of an interview. They had, at most, two working days time to arrange their schedules for these proposed interviews. They did not know the name of the prospective employer, nor could they even call to find the name of the employer, directions to the site, or find out if there were any materials that they might need to have with them at the interviews.

The Employer maintains that it needs a personal interview to establish whether the applicants possess the qualifications listed on their resumes. However, the Employer, by its actions had made it sufficiently difficult for the applicants to obtain an interview so as to discourage them from pursuing the job opportunity. Based on the above, we find that the Employer has not shown a good faith effort to recruit U.S. workers, and has not explained the lawful, job-related reasons for rejecting each U.S. workers in violation of §656.21(j)(1)(iv). Accordingly, the CO properly denied certification.

### ORDER

The Final Determination of the Certifying Officer denying labor certification is hereby AFFIRMED.

NAHUM LITT  
Chief Administrative Law Judge

NL:WB

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<sup>2</sup> The text of the Mailgram follows: "An appointment has been scheduled for the iron worker position on Monday April 6, 1987 at 9:00 a.m. Report to 906 Manganita Street, Los Angeles, California with Donald Lamb. Must be on time. Donald Lamb."